



COMMENTARY

MAY 2019

Dallas Mandates Paid Sick Leave, Joining Other Texas Cities and U.S. Jurisdictions

IN SHORT

The Situation: Dallas City Council recently passed the "Earned Paid Sick Time" ordinance requiring private employers to establish and administer paid sick time policies to employees working in Dallas. The ordinance is similar to those passed in both Austin and San Antonio last year.

The Result: The Dallas and San Antonio ordinances are scheduled to take effect on August 1, 2019. The Austin ordinance was temporarily enjoined on the grounds that it is unconstitutional and preempted by the Texas Minimum Wage Act. All three Texas ordinances face potential roadblocks from the Texas legislature.

Looking Ahead: Three major Texas cities are now part of the more than 30 local jurisdictions and 11 states that have passed paid sick leave laws. Employers who operate in multiple jurisdictions should consult with counsel when developing policies and practices to account for each law's varying requirements.

Last month, the Dallas City Council passed the "Earned Paid Sick Time" ordinance requiring private employers to establish and administer paid sick time policies to employees working in Dallas. The ordinance (19-479) is similar to those passed in both Austin (20180215-049) and San Antonio (2018-08-16-0620) last year.

General Requirements

In all three jurisdictions, private employers with 15 or more employees must give workers one hour of paid sick leave for every 30 hours worked, with accrual capped at 64 hours per year. Sick time will begin accruing at the commencement of employment or when the ordinances take effect, whichever is later. All available earned sick time, up to the yearly cap, must be carried over to the next year. Employers are not required to allow employees to use earned paid sick time on more than eight days in one year.

Applicability

To be covered, employees in Dallas, Austin, and San Antonio must perform at least 80 hours of work for pay per year within the relevant city limits.



Three major Texas cities are now part of the more than 30 local jurisdictions and 11 states that have passed paid sick leave laws.



Use of Earned Sick Time

Employees in all three cities may use earned sick time for absences from their scheduled work time: (i) caused by the physical or mental illness or injury, preventative medical or health care, or a health condition of the employee or a family member; or (ii) to seek medical attention, seek relocation, obtain services of a victim services organization, or participate in legal or court-

ordered action related to an incident of victimization from domestic abuse, sexual assault, or stalking involving the employee or employee's family member. Employees covered by the ordinances seeking to use earned paid sick time must provide a "timely request" for its use before their scheduled work time. However, employers cannot prevent employees from using earned paid sick time for an unforeseen qualified absence.

Employers must compensate employees using accrued sick time by paying the same compensation that employees would have received if they had worked their scheduled hours "exclusive of any overtime premium, tips, or commissions," but no less than the state minimum wage.

Penalties

Companies may be subject to a civil penalty up to \$500 for each violation.

Other Key Requirements and Provisions

- For requests to use earned sick time for more than three consecutive workdays, employers may adopt reasonable verification procedures to establish that an employee's request falls under one of the permissible uses. Notably, the Dallas and San Antonio ordinances specify that these verification procedures cannot require an employee to explain the nature of any domestic abuse, sexual assault, stalking, illness, injury, or health condition. Austin's ordinance is silent on this issue.
- Employers must maintain records establishing the amount of earned sick time accrued and used by each covered employee.
- Employers are required to provide employees with an electronic or written statement showing their available earned paid sick time on at least a monthly basis.
- Employers must provide a notice of the employee's rights in employee handbooks.
- Employers are not required to find replacements to cover absences as a condition of using sick time.
- Employers must display signs describing the ordinance in conspicuous places where notices to employees are customarily posted. In Austin, the sign must be displayed in "all appropriate languages." In Dallas and San Antonio, the city has the authority to prescribe the languages of the signs required under the ordinance.
- The ordinances each include non-retaliation provisions.

Status of the Ordinances

- The Austin ordinance is tied up in litigation brought by business associations. In November 2018, implementation was temporarily enjoined on the grounds that it is unconstitutional and preempted by the Texas Minimum Wage Act.
- The Dallas and San Antonio ordinances are scheduled to take effect on August 1, 2019.
- All three Texas ordinances face one major potential roadblock. The Texas Senate approved a bill submitted by state Senator Brandon Creighton that would prevent cities from mandating that employers offer paid sick leave.

THREE KEY TAKEAWAYS

1. With the addition of Dallas, three major Texas cities are now part of the more than 30 local jurisdictions in more than 10 states that have passed paid sick leave laws across the country.
2. In addition, 11 states, plus the District of Columbia and Puerto Rico, have passed statewide paid sick leave laws.



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3. Because of the similarity of the three Texas ordinances, compliance with one likely means compliance with all. The same cannot be said, however, nationwide. There are material differences in the patchwork of state and local paid sick leave laws that have been enacted across the country. Accordingly, employers who operate in multiple jurisdictions with these laws should consult with counsel in developing policies and practices that account for these differences.



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[Natalia O. Delaune](#), an associate in the Dallas Office, assisted in the preparation of this Alert.

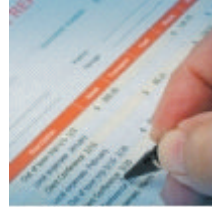
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